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THE South-Carolina Gazette.

Containing the freſheſt Advices Foreign and Domeſtick

From Saturday, APRIL 14, to Saturday, APRIL 21, 1733.

In the COUNCIL-CHAMBER, *Thurſday the 19th of April* 1733.

ORDERED,

THAT the SPEECH made this Day, by the Hon. *Francis Yonge*, Eſq; to this Board, be printed in the next *Saturday*'s GAZETTE.

J. BADENHOP, *Cler' Conc'*

The SPEECH *of the Hon.* Francis Yonge, *Eſq; to His Excellency the Governor, and His Majeſty's Honourable Council*, April 19, 1733.

May it pleaſe your Excellency, and Gentlemen of His Majeſty's Council.

IT is with the utmoſt Concern, that I ſee our Fueds and Diſſentions carry'd to ſuch a Hight, as in all Probability will retard the publick Buſineſs, and conſequently be detrimental to the whole Province; and all this, not under the Government of a Tyrant, or One that has deſerved ill of any Body, but (I hope, it will not be thought Flattery in me to ſay) under the *mild* and *juſt Government* of One that has always made it his Study, to do all the Good he can to every individual Perſon; and yet, (ſuch is the Frailty, or rather Corruption, of human Nature) that all the Good he has, or can do, ſhall not be able to preſerve him from the *Envy* and *Malice* of ſome People; but, I hope, they are not many.

I am called upon to undertake a Task, which being now neceſſary, I ſhall perform in the beſt Manner I can, altho' I know myſelf very unequal to it.

Liberty is now become the grand Theme! and who ſhall ſpeak againſt ſo great a Bleſſing? But therefore let ſuch as want it, conſider well, whether they have not done any thing to forfeit it; for if they have, themſelves are the Authors of their own unhappineſs; and whether they are ſo, I muſt leave to your Determination; but I ſhall take Leave to ſtate this Affair; *firſt*, With Relation to the things done by Dr. *Cooper*, Mr. *Greeme*, and Mr. *Vaughan*, now under Confinement by the Commons Houſe of Aſſembly, and for which they are ſo confined: and then I ſhall examine a little into the Power of that Houſe with Relation thereto; and quote ſome Paſſages out of ſuch Authors and Books, as I have now occaſionally peruſed, the better to inform myſelf, whether ſuch Commitments are cognizable in the Inferior Courts, or if Perſons ſo confined, are within the Intention of the *Habeas Corpus Act*.

And firſt then, I find Dr. *Cooper*'s Commitment is for *ſuperintending the Deputy Surveyor's in laying out Lands contrary to Law, and the Governor's Warrants, which tends to the creating litigious Diſputes, and involving the Country in the utmoſt Confuſion.*

Mr. *Greeme*'s Commitment is *for that he, as Attorney at Law, did fill up and ſign a* Capias ad Reſpondendum *againſt* John Brown, *Meſſenger of the Houſe, directed to the Provoſt Marſhal, at the Suit of* Thomas Cooper, *Eſq*, &c.

That of Mr. *Rowland Vaughan*, is *for an open and notorious Affront and Contempt offered the Houſe, by ſerving a Writ of* Habeas Corpus *on* John Brown, *Meſſenger, when he was actually in the Execution of his Office, on the Buſineſs of the Houſe, with his Rod in his Hand.*

Far be it from me to undertake to tell what are the Commons Privileges; but it is preſumed, they are the ſame as the Houſe of Commons in *Great Britain*, ſince his Majeſty has been pleaſed (altho' Negatively) to allow it? by ſaying they ſhall have no more than

than that Houſe enjoys. And He has been pleaſed to direct poſitively, that they and their Servants ſhall be privileged, and free from Arreſts, during their Seſſions. This then being Granted; let us ſee whether theſe Gentlemen have exceeded their Bounds, and done more than the Commons of *England* have, or more than former Aſſemblies have done in this Province.

It is objected without Doors, that they cannot commit for any thing but Contempt and Breach of Privilege; but the Practice is much otherwiſe, ſince we find, they have committed ſome Biſhops, and Doctors of Divinity, for Preaching ſuch Sermons as diſpleaſed them; particularly * Dr. *Manwaring* in the Reign of K. *Charles* I. and Dr. *Sacheverel* in that of Q. *Anne*; and again, the ſame Dr. *Manwaring*, when after Biſhop of St. *David's*, and Dr. *Harſnett*, Biſhop of *Chicheſter*: Have they not alſo commited the Directors of the *South Sea* Company, and thoſe of the *Charitable Corporation*, the Jayl Keepers *Huggins* and *Bambridge*, and many others, wherein no Manner of Privilege of their Houſe was concerned; and in all which Caſes there were Laws to puniſh without ſuch a Procedure: And is not Dr. *Cooper's* Caſe as well queſtionable before them, as any of theſe: Has he not been dividing, and diſpoſing of other People's Properties, contrary to Law? And if this Step of the Commons Houſe had not been taken, I mean the taking him into Cuſtody, together with the Surveyors that aſſiſted him, where might it have ended? They might have enquired who's Titles were deficient, or whoſe they thought ſo, and then have ſurveyed their Lands, and proteſted againſt the Governor for not granting them, as they have others. And (if the Quit-Rent Law ſhould be repeal'd, which their Endeavours have not been wanting to get effected) I fear, there will be but few legal Titles in this Province, and then there may be fine Fiſhing; but what Diſtractions muſt this produce? and how general the Calamity? And does not a general Calamity require a Parliamentary Enquiry? And what Steps has he taken towards excuſing himſelf? Why he has taken out a Writ againſt the Officer that has him in Cuſtody, and inſiſted on his being immediately arreſted, tho' the Officer of the Commons Houſe of Aſſembly, and during their ſitting; by which he has added a Contempt to his former (I muſt ſay) unwarrantable Proceedings.

Mr. *Greeme's* is a Caſe that happens every Seſſions in *England*, I believe, I may ſay, ſcarce one paſſes, without Attornies and Baliffs being taken into Cuſtody for Arreſts, either of Members, or their Servants, or Officers.

Mr. *Vaughan's*, indeed, (it may be ſaid) is ſomewhat a harder Caſe, it being for ſerving the Meſſenger, with a legal Writ, in Behalf of his Friend or Client; but then Time, nor place was conſidered, which it ought to have been; he could find no time to ſerve this Writ, but when the Meſſenger was in the actual Exerciſe of his Office, with his Rod in his Hand; and both theſe Gentlemen have reiterrated their Faults, inſtead of excuſing them, by filling up, and putting into the Marſhal's Hands, two Writs to be ſerved upon the Meſſenger during their Seſſions, by which they are both Guilty of a new Breach of Privilege. And thus much to juſtify the Commons Houſe for their Commitment.

Now the uſual way of Enlargement has been by a Submiſſion; but, I am ſory to ſay, the Contrary, in the Caſe of the Perſons now in Cuſtody, has been practiſed: but inſtead of it, they have ſued out Writs of *Habeas Corpus*, to which they ſay they have a Right; but it is ſuch a Right as has always been denied, by the Houſe of Commons, as may be ſeen in the Caſe of * Dr. *Shirley*, in the 27 *Car.* 2. and of the *Aylsbury* Men, in the 4th of Queen *Anne*: This Opinion of the Commons was confirmed (if I may call it ſo) by the Opinion of Eleven of the Twelve Judges: Indeed, in both the Caſes before quoted, the Lords were of a different Opinion, and Diſputes ran ſo high amongſt them, that a Diſſolution was the Conſequence of the One, and a Prorogation of the Other; but the Diſpute ſtill ſubſiſts, and will in all probability, at all times be inſiſted on, by both Houſes in their different Ways; but it is remarkable, that notwithſtanding there has been ſeveral Commitments of the Houſe of Commons, ſince the *Aylsbury* Caſe, as well for Crimes and Miſdemeanors concerning the Publick, as for Contempts and Breach of Privilege; yet there is no Inſtance of any Writ of *Habeas Corpus* that has ever been prayed; which ſeems to be the Effects of the Reſolutions of the Commons, in the † Caſes before mentioned, that no *Habeas Corpus* ſhall be brought againſt a Commitment of the Commons Houſe. And this Concluſion is very natural, though it cannot be proved to be the true Reaſon.

Since therefore, thoſe two Great Houſes in *Great Britain* can't adjuſt this Diſpute, which way ſhall it be done here? Why, I can't help ſaying, I am ſorry to find, that ſince that cannot be done, the publick Service muſt be poſtponed, if not intirely fruſtrated, by a Diſſolution or Prorogation, at the leaſt. And why? becauſe two or three Men, with more Obſtinacy than good Conduct, think themſelves above a Submiſſion. And ſhall we, who have the Honour to be appointed by his Majeſty, to Adviſe his Excellency, as his Council, adviſe him to Sacrifice and lay at Stake his Intereſt with the Repreſentatives of the People, that he may obtain the more Grace from one that has been guilty of a Breach of the Laws in an open and notorious Manner, and of two others, who have actually been guilty of a Breach of the Privileges of the Commons Houſe of Aſſembly? And may, by the ſame Rule, invade thoſe of this Houſe, when they ſhall find it neceſſary to ſerve their Purpoſes.

* Vide *Engliſh Liberties, compiled by* Henry Care, 1719.

* Vide *Echard's Hiſt. of Eng.* p. 384. fol. Edit.

† Vide *Annals of* Q. *Anne.* Vol. 3. p. 209.

Upon Consideration of the whole, I must beg Leave to dissent from the Opinion of Mr. *Chief Justice*, and give it as mine, that it is by no Means expedient for his Excellency at this time, to prorogue, much less dissolve, the present Assembly; but that his Excellency be desired to transmit to *Great Britain*, a true State of this Dispute, and in the mean time, that the Publick Affairs, now under Consideration of the General Assembly, be not stopt or otherwise impeaded, by any Act of this House, by intertering with the Privileges of the Other.

Francis Yonge.

In the COMMONS HOUSE OF ASSEMBLY, *April* 19, 1733.

WHEREAS several evil-disposed Persons have insinuated that the presen. Commons House of Assembly, have lately assumed to themselves greater Powers and Privileges than do belong to them.

It is therefore thought proper to publish the Proceedings of former Assemblies, by which it will appear, that the present Commons House of Assembly have not created or exercised any new Privileges or Powers, but only maintain what former Assemblies have constantly insisted on, and which were never yet denied or controlled, as will fully appear from the Proceedings of the Commons House of Assembly in the Year 1722, during the Administration of Governor *Nicholson*, at which time near 30 of the principal Inhabitants of *Charlestown*, were committed by the House for some indecent Reflections contained in a Memorial annexed to their Petition, desiring to be heard against a Money-Bill then depending.

Soon after their Commitment they applied to the Governor and Council, desiring to be heard by Council before that Board against the said Bill; on which the following Resolutions were entered.

In the Upper House, *Dec.* 13, 1722.

Read, and *Ordered*, That the Clerk of this House acquaint them, that they shall be heard on the subject Matter of the Bill therein contained, To-morrow Morning at 10 o' Clock.

Test. William Tunley, Cler' Con'

Resolved, That the Petition be sent down to the Commons House of Assembly, with Notice that the Petitioners, tho' they be admitted to be heard upon the subject Matter of the Bill; (according to the Privileges of English Subjects) yet they are to be returned into Custody, and the Privilege of the Commons preserved.

Test. William Tunley, Cler' Con'

On reading the aforesaid Petition, *Resolved*, that the following Message be sent to His Excellency the Governor.

May it please your Excellency,

WE have received by the Hands of Mr. Secretary *Hart*, a Petition to your Excellency and his Majesty's Council, which has been read in this House, and we find therein two Minutes taken in Council, and attested by *Wm. Tunley*, Clerk of the Council, wherein we perceive the Petitioners have Leave given them to be heard upon the subject Matter of a Bill lying before the Council; on duly considering those Minutes, we must inform your Excellency, that we take this manner of Proceeding to be a Breach of the Privileges of this House; for since they stand committed by this House, they cannot be released for any time, but by the same Power that committed them, and We do design to lay our Reasons, for this our Opinion, before your Excellency, and his Majesty's Council To-morrow Morning.

James Moore, Speaker.

The above Message was sent up to his Excellency by Col. *John Fenwicke*, and *Benjamin Whitaker*, Esq;

Benjamin Whitaker, Esq; presented to the House, the following Message to his Excellency the Governor, which was read and agreed to, *And Ordered* to be sent to the Governor.

May it please your Excellency,

THIS House having taken under their Consideration a Petition and Memorial of certain Persons calling themselves Merchants and Traders residing in this Province, in behalf of themselves, and the Merchants in *Great Britain* trading hither.

Resolved, That the said Memorial was false and scandalous, and destructive to the true Interest of this Province, and a base Reflection on Parliamentary Proceedings, and an high Indignity to the present General Assembly, and for those Reasons, the House committed the Persons exhibiting the same, to the Custody of our Messenger.

Your *Excellency* was pleased the last Night to send us a Petition signed by the aforesaid Persons, whereby the Petitioners allege, that they conceive, that the Right of Petitioning in a legal Manner, to legal Purposes, appertain by Law and Usage to all his Majesty's Subjects, and pray that they might be heard on the subject Matter of the aforesaid Memorial, and may have Liberty to offer any farther Reasons, why the said Bill ought not to be passed, as being detrimental to the Interest of this Province.

We must beg leave to acquaint your *Excellency*, that we conceive this Manner of Proceeding to be Unparliamentary, and a further Indignity to the House, for the Reasons following.

For that we are of Opinion, that every Petition against Bills under the Consideration of the Assembly (especially such as concern Money or Supplies), ought to be first referr'd to, and considered by this House, where every Inhabitant of this Province hath his Representative; and, in case the Bill is passed with us, that then the Petitioners may be heard before your *Excellency* and his Majesty's Hon. Council.

That we can't but conceive, That the Request of the Petitioners to be heard on the subject Matter of the said Memorial, (which, by this House, is deemed, and *Resolved*, to be false and scandalous, and destructive to the true Interest of this Province) is a Justification of the Offence before offered, and a further Indignity to the House.

That we conceive, That when any Persons are in the Custody of the Messenger of this House, his Imprisonment cannot be released, or suspended, or any ways ordered or controuled by any other Power in this Province, than of this House.

That this House are of Opinion, That Petitioning in a legal Manner and Method, is the Right of every *English* Subject: But we, at the same time, are of Opinion, that it is the undoubted Right of the House of Commons to punish the Petitioners for Falsity, Scandal and Insolence.

We must further beg leave to acquaint your *Excellency*, that it is the Opinion of this House, that the Method of the Petitioners Proceeding, is designed and contrived to create Divisions amongst us; but we being truly persuaded and convinced of your *Excellency*'s good Intentions towards us, and how much you have at Heart the Interest of his Majesty, and the Welfare of this Province; we shall always use our utmost Endeavours to suppress such Attempts, and whilst we are under your just Administration, we shall take the Opportunity of discountenancing those Tumults and Disorders, which have been too frequent amongst us.

Dec. 13, 1722. *James Moore*, Speaker.

By the above recited Proceedings, faithfully transcribed from the Journals of the Commons House of Assembly, it clearly appears, what Power and Privileges the then Assembly claimed, possessed and exercised: These, the Journals aforesaid, transmit to the present Assembly, and therefore, for the Commons House, at this Time, to give up, or recede from them, would be a notorious Reflection on the Proceeding of former Assemblies, a sapping the Foundation of the Constitution, and an Unjustifiable betraying the Rights, Powers, and Privileges of the Commons in Assembly.

By Order of the House,

I. AMYAND, C.D.C.

CHARLESTOWN, *April* 21.

On Monday Morning last sail'd his Majesty's Ship the Squirrel, Capt. George Anson, Commander, a Cruising.

One Day this Week, Tobias Fitch, Esq, was appointed by the Governor, Sole Commissioner for Indian Trade.

PRICES of the following GOODS.

Rice 30 s. per Hund. Pitch 25 s. per Bar. Tar 27 s. 6 d. Turpentine 23 s. 9d. per Hund. Skins 17 s. 6 d. per Pound. Wine 85 l. per Pipe. Indian Corn 10 s. per Bushel. Pease 10 s. Staves 15 l. per Thousand. Flour 3 l. per Hund. Brown Bread 3 l. 15 s. Middling 4 l. 10 s. White 6 l. 10 s. Barbadoes Rum 12 s. per Hogsh. Boston None. Limejuice 15 s. per Hogsh. Melasses 6 s. 3 d. per Hogsh. Salt 10 s. per Bushel.